MUNICIPAL CORPORATIONS — MUNICIPAL PROPERTY — LEASE FOR PRIVATE PURPOSES. — A town, having acquired a dock for public use, leased an ice-house occupying a portion of it to a private corporation. *Held*, that a taxpayer can compel the removal of the ice-house as an obstruction to the use of the wharf. *People ex rel. Swan* v. *Doxsee*, 120 N. Y. Supp. 962 (Sup. Ct. App. Div.).

A municipal corporation can sell or lease property not impressed with any public use. *Pacific Coast S. S. Co.* v. *Kimball*, 114 Cal. 414. And even if the city purchases and administers property for a public purpose, a lease may be made to private individuals in furtherance of the main project; thus a wharf may be leased to a warehouseman, who is compelled to offer equal facilities to all. *Belcher Sugar Refining Co.* v. *St. Louis Grain Elevator Co.*, 101 Mo. 192. Yet if such a lease is of long duration, it has been held void. *Illinois Canal Co.* v. *St. Louis & the Pacific Elevator Co.*, 2 Dill. (U. S.) 70. Similarly, a portion of a park may be leased for refreshment purposes. *State* v. *Schweickardt*, 109 Mo. 496. But the power of a municipal corporation is more restricted when property is acquired by dedication than when it is acquired by purchase. *Village of Riverside* v. *MacLain*, 210 Ill. 308, 328. By well-established authority, however, a city has power to lease for other than governmental functions any portion of its public buildings not needed for its own purposes. *Worden* v. *New Bedford*, 131 Mass. 23; *Bell* v. *City of Platteville*, 71 Wis. 139. But the use of such a leased portion must not interfere with the governmental purpose. *Sugar* v. *City of Monroe*, 108 La. 677. This power must be regarded as an exception; for the common-law power of a municipality is wisely restricted so that no commercial use can be made of any realty dedicated to, or administered for, the public. *Contra*, *Huff* v. *Mayor and Council of Macon*, 117 Ga. 428.

PARTNERSHIP — PARTNERSHIP PROPERTY — CONVERSION OF REALTY INTO PERSONALTY. — A, B, and C were partners in a firm owning land, the legal title being in A, B, and C. A died. All firm accounts were settled without calling on the land. *Held*, that A's heirs may bring a bill for partition of the land. *Schleissner* v. *Goldsticker*, 120 N. Y. Supp. 333 (Sup. Ct., App. Div.). See NOTES, p. 553.

PLEADING — AMENDMENT OF DECLARATION AFTER LIMITATION PERIOD. — A Canadian statute allowed an action by "the consort and the ascendant and descendant relations" of a deceased for his death by wrongful act, if brought within a year after his death. A widow, who, as administratrix of her husband's estate, had brought an action under this statute in New York, sought, more than a year after the death, to amend her complaint so as to sue in her right as widow. Daughters of the deceased also sought to be added as parties plaintiff. *Held*, that the amendment should be allowed as to the widow but denied as to the daughters. *Johnson* v. *Phœnix Bridge Co.*, 197 N. Y. 316.

As the tort upon which the present action was based occurred in Canada, the Canadian Death Act fixes the nature of the right. *Kiefer* v. *Grand Trunk Ry. Co.*, 12 N. Y. App. Div. 28. And while the New York Statute of Limitations, as the *lex fori*, determines whether or not a remedy is barred upon the foreign right, the running of the limitation period of the Canadian Death Act extinguishes the right. An amendment changing the party plaintiff from administratrix to widow adds a new party, even when the administratrix and widow are one. *Doyle* v. *Carney*, 190 N. Y. 386. For the law recognizes the personal representative as distinct from the individual. *Leonard* v. *Pierce*, 182 N. Y. 431. Yet despite the expiration of the limitation period and the change of parties, it seems correct to have allowed this amendment. *Van Doren* v. *Pennsylvania R. Co.*, 93 Fed. 260. *Contra*, *Lower* v. *Segal*, 60 N. J. L. 99. N. Y. CODE CIV. PROC. § 723. The change was merely formal, for though the plaintiff sued originally as administratrix, it was for her own benefit as widow, and the defendant had ade-

quate notice of the real cause of action before the running of the statute. *Cf. Atlanta, Knoxville, & Northern Ry. Co.* v. *Smith*, 1 Ga. App. 162, 168. But as the daughters were entirely new parties, their joinder was properly denied.

PUBLIC OFFICERS — COMPENSATION — RELATIVE RIGHTS OF DE JURE AND DE FACTO OFFICERS. — A *de jure* officer of a municipal corporation sued a *de facto* officer to recover the fees incident to the office in question. *Held*, that the *de facto* officer can set off the expenses incurred in earning the fees. *Albright* v. *Sandoval*, 30 Sup. Ct. 318.

A *de facto* officer cannot recover any compensation for his services. *Smith* v. *Van Buren County*, 125 Ia. 454; *McGillic* v. *Corby*, 37 Mont. 249. But a *de jure* officer is given all the emoluments of his office, even if he has been working elsewhere. *Bullis* v. *City of Chicago*, 235 Ill. 472. But *cf. Hansen* v. *Mayor of Jersey City*, 71 Atl. 1116 (N. J.). Yet if the city has paid the *de facto* officer, the weight of authority denies recovery to the *de jure* officer. *Board of Commissioners of El Paso County* v. *Rohde*, 41 Colo. 258. *Contra, Rassmussen* v. *Board of Commissioners*, 8 Wyo. 277. Under such circumstances, however, the *de jure* officer can get compensation from the usurper of his office. *Kreitz* v. *Behrensmeyer*, 149 Ill. 496. The principal case is supported by authority in giving the rightful incumbent only the amount he would have profited by the position. *Henderson* v. *Kornig*, 91 S. W. 88 (Mo.); *Bier* v. *Gorrell*, 30 W. Va. 95. These cases evidently take as the measure of damages the injury caused by the usurpation. Although this view justifies the deduction of the expenses incident to the office, it should require the damages to include not only the fees of the office but also some recompense for the loss of a public position by the plaintiff. By what is considered the correct view, the plaintiff should recover the total salary or fees, by suit against either the city, or the usurper, as a recipient of a sum of money due to the plaintiff, for the emoluments of an office are incident to the right to the office. See 15 HARV. L. REV. 675.

RELEASE — REQUISITES AND VALIDITY — RELEASE OF CAUSE OF ACTION VOID AT LAW BY FRAUD. — The plaintiff, an illiterate employee of the defendant, was injured through the latter's fault. The defendant paid him wages for the time he would be incapacitated and obtained his signature to a release which the plaintiff was led to believe was merely a receipt. The plaintiff sued without tendering back the money paid him. *Held*, that the plaintiff can recover. *Herman* v. *P. H. Fitzgibbons Boiler Co.*, 120 N. Y. Supp. 1074 (Sup. Ct. App. Div.).

Fraud improperly inducing consent is generally considered an equitable ground for avoiding an agreement. *Smith* v. *Ryan*, 191 N. Y. 452; *Gould* v. *The Cayuga County Nat. Bank*, 86 N. Y. 75; *Thayer* v. *Turner*, 8 Met. (Mass.) 550. Again, fraud may lead a man to believe he is signing an instrument wholly different from the one he is in fact signing. There the fraud goes to the essence of the matter and the obligor has never in fact consented. If the signer is blind or illiterate and is thus misled as to the nature of the instrument a plea of *non est factum* is good. *Thoroughgood's Case*, 2 Coke *9 b (444); *County of Schuylkill* v. *Copley*, 67 Pa. St. 386, 389. This distinction governs releases of causes of action. If the plaintiff knew he was releasing the cause of action, but was induced to do so by fraud, he must tender back the consideration and rescind the release before he can recover on the original claim. *Barker* v. *Northern Pac. Ry. Co.*, 65 Fed. 460; *Och* v. *Mo. K. & T. Ry. Co.*, 130 Mo. 27. But when the plaintiff had no intent to release and has been led to believe that the money was paid him in part satisfaction or for wages, and that the release was merely a receipt, then there is no compromise, the release is void, and therefore rescission and tender back are not necessary. *Mullen* v. *Old Colony Ry.*, 127 Mass. 86; *Cleary* v. *Municipal Electric Light Co.*, 47 N. Y. St. Rep. 172, 139 N. Y. 643; *Chicago, R. I. & Pac. Ry. Co.* v. *Lewis*, 13 Ill. App. 166.